

APPLICANT:
Stonemill, LLC

REQUEST: A special exception to allow accessory parking and driveway access to serve a permitted use and an Interpretation to extend the B2 zoning boundary line 100 feet

HEARING DATE: January 5, 2005

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5453

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Stonemill, LLC

LOCATION: 3-13 Red Pump Road, Bel Air, Maryland 21014
Tax Map: 40 / Grid: 3F / Parcel: 379 / Lot: 1
Third Election District (3rd)

ZONING: B1 / Neighborhood Business and B2 / Community Business Districts

REQUEST: A special exception pursuant to Section 267-53K(1-4) to allow accessory parking and driveway access in the B1 District to serve a permitted use in the B2 District and an Interpretation of Zoning Map pursuant to Section 267-10B to permit the extension of the B2 zoning boundary line one hundred feet (100 feet).

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicant Stonemill, LLC, testified Jacquelyn Magness Seneschal, who identified herself as a Senior Associate and Planner with KCI Technologies. Ms. Seneschal, who offered into evidence her resume, has been a land planner since 1977, and has given testimony before the Board of Appeals on prior occasions. She was offered and accepted as a professional land use planner.

Ms. Seneschal described the subject property as consisting of approximately .93 acres, and located close to the intersection of Red Pump Road and Maryland Route 24. The property is improved by a small strip shopping center, containing five separate stores. Ms. Seneschal described the property as being split-zoned with a portion of the subject property to the west being zoned B1 and the remaining property being zoned B2. Ms. Seneschal was employed by the Harford County Department of Planning and Zoning at the time the property was given its present zoning. She stated that the split zoning was originally given the property as the County planners had determined that the neighborhood, at that time, contained both intense commercial uses and less intense residential uses. The subject property was accordingly divided by zoning to reflect these differences in the neighborhood.

Case No. 5453 – Stonemill LLC

Ms. Seneschal stated that the Applicant now requests an extension of the B2 District by 100 feet. The result of such a re-zoning will allow an existing user of the strip center, the Red Pump Café, which is currently a take-out restaurant, to install seats and to serve patrons within the restaurant. This use is not allowed in its B1 District, but is allowed in a B2 District. Ms. Seneschal explained there would be no other change to any of the uses in the strip center, nor will any expansion of the center or of users take place. There will be no visible change to the property, or its driveways or improvements, with the exception that the Red Pump Café will now be able to seat patrons within its confines.

Ms. Seneschal stated that the neighborhood had changed since the time the property was split zoned. There is now a fairly dense stand of mature trees across St. Francis Road from the subject property and in front of the residences located there; there is a large retirement community located to the Bel Air side of the property; McDonald's has expanded its parking, behind and to the south of the subject property; uses to the north of Red Pump Road have also changed to a more commercial nature. Ms. Seneschal explained that the increase in intensity of these uses, and the increase in the screening along the residential properties, has created a situation where split zoning is no longer appropriate.

Ms. Seneschal next testified that at the time of the 1982 comprehensive re-zoning the property was under single ownership. She believes that the proposed change will not impact the community in any way, nor will it have any adverse impact on the community.

Ms. Seneschal also explained the Applicant's request to allow accessory parking and driveway access in a B1 neighborhood district to serve a permitted use in a B2 District. In fact, a driveway from St. Francis Road runs through the existing B1 District, and services the uses located in the B2 District. If the zoning line is moved by 100 feet, there will still be a small portion of this driveway within the B1 which will be servicing the B2 shopping center. There will be no impact, or change of use, if the requested special exception is granted. The driveway exists; it will continue to exist; its use will continue to allow access to the existing shopping center. Ms. Seneschal characterized the request as an "administrative" request, having no visible impact on the use of the subject property.

The witness also testified that the Applicant will be requesting re-zoning of the entire parcel during the upcoming comprehensive zoning cycle.

Ms. Seneschal added that the parking requirements will continue to be met, and there is no increase in parking planned. The requests meet or exceed all applicable County standards.

Case No. 5453 – Stonemill LLC

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune, on behalf of the Department, has reviewed the request. He is of the opinion that the split B1/B2 zoning serves no good purpose. The request will simply clean up a situation which should not exist by giving the entire building a single zoning classification. There will be no physical change in the use or appearance of the subject property or improvements thereon. The only result would be that the tenant of the restaurant will be given more flexibility in that it will now allow the seating of patrons.

In Mr. McClune's opinion the application can meet or exceed all applicable standards. Mr. McClune feels there will be no adverse impact if the interpretation and special exception is granted. The request basically conforms the zoning of the property to its actual use.

There was no testimony or evidence presented in opposition.

APPLICABLE LAW:

Section 267-53K (1), (2), (3) and (4) of the Harford County Code states:

“K. Accessory parking areas, driveways and private roads. These uses may be granted in any district to serve a use permitted and located in another district but not permitted in the subject district, provided that:

- (1) The parking area, driveway or private road shall be accessory to and for the use of one (1) or more agricultural, residential, business or industrial uses located in an adjoining or nearby district.*
- (2) No charge shall be made for the parking or storage of vehicles on any parking lot approved pursuant to this provision.*
- (3) Any private road or driveway shall provide access to an approved private road, county road or state road or highway.*
- (4) The number of parking spaces and total parking area approved in the subject district under this section shall not exceed thirty percent (30%) of the parking spaces and area required by this Part 1 for the permitted use.”*

Case No. 5453 – Stonemill LLC

Section 267-10B of the Harford County Code states:

“B. Extension of a district: permitting the extension of a district if the boundary line of a district divides a parcel held in single ownership on the effective day of this Part 1 provided that such extension does not exceed one hundred (100) feet beyond the boundary line.”

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this request and is discussed in further detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The testimony of the Applicant’s representative, and a review of the evidence of record, particularly including the site plan of the subject property (Applicant’s Exhibit No. 2), describe a long established strip shopping center on an approximately one acre piece of property located at the intersection of St. Francis Road and Red Pump Road, close to the intersection of Red Pump Road and Maryland Route 24. As explained by Ms. Seneschal, in 1982 the property was “split zoned” into B2 and B1 Districts. It appears that the property was bisected almost exactly in the middle, which provided for B2, or more intensive commercial zoning, to the Maryland Route 24 side, with less intensive B1 to the St. Francis Road, or residential side. Despite this split zoning, the strip shopping center has apparently thrived, containing as it does today a number of small neighborhood-type tenants. The property is accessed from St. Francis Road as well as Red Pump Road, with the access from St. Francis Road going through the B1 zoned portion of the parcel.

The Applicant now suggests that the neighborhood has changed since 1982 in a number of ways, all of which have contributed to an increased commercialization of the area. Furthermore, the Applicant suggests there is no good reason now (if there ever was), to have the property split zoned, as the split zoning prohibits the user of the space on the west end of the property from establishing an eat-in restaurant. Accordingly, a movement of the B2 line by 100 feet toward St. Francis Road will put the entire strip center building within the B2 District and would only leave a very small portion of the driveway off St. Francis road in a B1 category.

In reality, the movement of the B2 District line by 100 feet will to all outward appearances result in little if any impact on the neighborhood. The parking lot will not change; the access roads will not change; neither the number of spaces nor the square footage of those spaces will change. Indeed, the only perceptible significance of the request would be to create a situation in which the zoning designation more closely matches the actual use of the site.

Case No. 5453 – Stonemill LLC

The Harford County Development Regulations allow as a special exception a driveway or private road to serve a permitted use located in another district, provided certain requirements are met as contained in Code Section 267-53K. Truthfully, this request seems unnecessary given the long established use of the driveway in question to service the existing B2 uses. However, the Applicants request is addressed as follows:

1. *The parking area driveway or private road shall be accessory to and for the use of one (1) or more agricultural, residential, business or industrial uses located in an adjoining or nearby district.*

The existing driveway off St. Francis Road is accessory to and for the benefit of the retail uses located in the shopping center.

2. *No charge shall be made for the parking or storage of vehicles on any parking lot approved pursuant to this provision.*

No charge will be made for the parking or storage of vehicles.

3. *Any private road or driveway shall provide access to an approved private road, county road or state road or highway.*

The driveway provides access to St. Francis Road, a county road.

4. *The number of parking spaces and total parking area approved in the subject district under this section shall not exceed thirty percent (30%) of the parking spaces and area required by this Part 1 for the permitted use.*

There will be little if any parking available in that portion of the driveway which is to be located in a B1 District. In any event, that parking will not exceed thirty percent (30%) of the existing parking.

Accordingly, it is found the Applicant's requested special exception pursuant to Section 267-53K allowing the existing driveway through the existing B1 to service the uses located in the B2 District meets all specific requirements.

The Applicant next requests action by the Board, pursuant to the authority granted by Code Section 267-10, to permit the extension of the B2 District by no more than 100 feet. This extension may be granted if the subject property was held in single ownership on the effective date of the Development Regulations.

Case No. 5453 – Stonemill LLC

It is found, based upon the evidence of record, that the parcel was held in single ownership on the effective date of the Development Regulations, and the request does not exceed 100 feet. There was no evidence that such an extension should not be granted, or that if granted would have any adverse impact on any adjoining property, neighbor, or on the purposes or intent of the Harford County Development Regulations.

Having met the specific requirements of the applicable sections, the application must, however, be reviewed in light of Section 267-9I, to determine if it violates any of the general considerations of that section, discussed as follows:

Section 267-9I

- (1) *The number of persons living or working in the immediate area.*

The requested special exception and interpretation will have no adverse impact on individuals working or living in the area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

There is no evidence that the requests, if granted, will impact traffic, or pedestrian movement, in any way.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the county.*

There was no evidence presented that either the orderly growth of the neighborhood and community or the economics of the county will be effected in any way by the requests, and it is accordingly found there will be no such impacts.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

There should be no such impact. To the extent that there are any such effects now being generated by the existing shopping center, those impacts will not be exacerbated by the proposed use.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.*

These services are available, and will not be impacted by the request.

Case No. 5453 – Stonemill LLC

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The proposal is consistent with generally accepted planning principles.

- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

There should be no identifiable environmental impact. No potentially impacted natural feature or opportunity for recreation and open space have been identified.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

CONCLUSION:

It is accordingly recommended that the requested special exception and interpretation to allow the expansion of the B2 District by 100 feet be approved.

Date: February 4, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner